

110TH CONGRESS
1ST SESSION

H. R. 2413

To amend the Immigration and Nationality Act to provide for an increase in border patrol agents and other immigration enforcement activities, for a temporary agricultural worker program, and for a program to adjust the status of certain qualified long-term residents.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2007

Mr. DANIEL E. LUNGREN of California introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to provide for an increase in border patrol agents and other immigration enforcement activities, for a temporary agricultural worker program, and for a program to adjust the status of certain qualified long-term residents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Border Security and Immigration Reform Act of 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Increase in immigration enforcement activities.
- Sec. 3. Employment eligibility verification.
- Sec. 4. Expedited removal.
- Sec. 5. Nonimmigrant seasonal agricultural program.
- Sec. 6. Lawful status for certain long-term resident aliens.

3 **SEC. 2. INCREASE IN IMMIGRATION ENFORCEMENT ACTIVI-**
 4 **TIES.**

5 (a) INCREASE IN FULL-TIME, ACTIVE-DUTY BOR-
 6 DER PATROL AGENTS.—In each of the fiscal years 2008
 7 and 2009, the Secretary of Homeland Security shall, sub-
 8 ject to the availability of appropriations for such purpose,
 9 increase by not less than 3,000 the number of positions
 10 for full-time, active-duty Border Patrol agents within the
 11 Department of Homeland Security above the number of
 12 such positions for which funds were allotted for the pre-
 13 ceding fiscal year.

14 (b) INCREASE IN PERSONNEL FOR WORKPLACE EN-
 15 FORCEMENT.—In each of the fiscal years 2008 and 2009,
 16 the Secretary of Homeland Security shall, subject to the
 17 availability of appropriations for such purpose, increase by
 18 not less than 500 the number of positions for full-time
 19 personnel within the Department of Homeland Security
 20 whose duties directly relate to enforcement of the immi-
 21 gration laws in the workplace above the number of such

1 positions for which funds were allotted for the preceding
2 fiscal year.

3 (c) SEMI-ANNUAL REPORTS ON USE OF ENFORCE-
4 MENT AUTHORITY.—The Secretary of Homeland Security
5 shall submit to the Judiciary Committees of the House
6 of Representatives and of the Senate a report every 6
7 months on the Secretary’s use of authority to enforce the
8 prohibitions against unlawful employment, including the
9 number of cases in which fines or other penalties are
10 sought under section 274A of the Immigration and Na-
11 tionality Act (8 U.S.C. 1324a) and the number of such
12 cases in which any such fine or other penalty was ob-
13 tained.

14 **SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION.**

15 (a) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
16 TEM.—

17 (1) IN GENERAL.—Subsection (b) of section
18 274A of the Immigration and Nationality Act (8
19 U.S.C. 1324a) is amended by adding at the end the
20 following:

21 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION
22 SYSTEM.—

23 “(A) IN GENERAL.—The Secretary of
24 Homeland Security shall establish and admin-
25 ister a verification system through which the

1 Secretary (or a designee of the Secretary, which
2 may be a nongovernmental entity)—

3 “(i) responds to inquiries made by
4 persons at any time through a toll-free
5 electronic media concerning an individual’s
6 identity and whether the individual is au-
7 thorized to be employed; and

8 “(ii) maintains records of the inquir-
9 ies that were made, of verifications pro-
10 vided (or not provided), and of the codes
11 provided to inquirers as evidence of their
12 compliance with their obligations under
13 this section.

14 “(B) INITIAL RESPONSE.—The verification
15 system shall provide verification or a tentative
16 nonverification of an individual’s identity and
17 employment eligibility within 3 working days of
18 the initial inquiry. If providing verification or
19 tentative nonverification, the verification system
20 shall provide an appropriate code indicating
21 such verification or such nonverification.

22 “(C) SECONDARY VERIFICATION PROCESS
23 IN CASE OF TENTATIVE NONVERIFICATION.—In
24 cases of tentative nonverification, the Secretary
25 shall specify, in consultation with the Commis-

1 sioner of Social Security, an available secondary
2 verification process to confirm the validity of in-
3 formation provided and to provide a final
4 verification or nonverification within 10 working
5 days after the date of the tentative
6 nonverification. When final verification or
7 nonverification is provided, the verification sys-
8 tem shall provide an appropriate code indicating
9 such verification or nonverification.

10 “(D) DESIGN AND OPERATION OF SYS-
11 TEM.—The verification system shall be designed
12 and operated—

13 “(i) to maximize its reliability and
14 ease of use by persons and other entities
15 consistent with insulating and protecting
16 the privacy and security of the underlying
17 information;

18 “(ii) to respond to all inquiries made
19 by such persons and entities on whether
20 individuals are authorized to be employed
21 and to register all times when such inquir-
22 ies are not received;

23 “(iii) with appropriate administrative,
24 technical, and physical safeguards to pre-

1 vent unauthorized disclosure of personal
2 information; and

3 “(iv) to have reasonable safeguards
4 against the system’s resulting in unlawful
5 discriminatory practices based on national
6 origin or citizenship status, including—

7 “(I) the selective or unauthorized
8 use of the system to verify eligibility;

9 “(II) the use of the system prior
10 to an offer of employment; or

11 “(III) the exclusion of certain in-
12 dividuals from consideration for em-
13 ployment as a result of a perceived
14 likelihood that additional verification
15 will be required, beyond what is re-
16 quired for most job applicants.

17 “(E) RESPONSIBILITIES OF THE COMMIS-
18 SIONER OF SOCIAL SECURITY.—As part of the
19 verification system, the Commissioner of Social
20 Security, in consultation with the Secretary of
21 Homeland Security (and any designee of the
22 Secretary selected to establish and administer
23 the verification system), shall establish a reli-
24 able, secure method, which, within the time pe-
25 riods specified under subparagraphs (B) and

(C), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

“(F) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and alien identification or authorization number

1 which are provided in an inquiry against such
2 information maintained by the Secretary in
3 order to validate (or not validate) the informa-
4 tion provided, the correspondence of the name
5 and number, and whether the alien is author-
6 ized to be employed in the United States.

7 “(ii) When a single employer has sub-
8 mitted to the verification system pursuant to
9 subparagraph (A) the identical social security
10 account number in more than one instance, or
11 when multiple employers have submitted to the
12 verification system pursuant to such paragraph
13 the identical social security account number, in
14 a manner which indicates the possible fraudu-
15 lent use of that number, the Secretary of
16 Homeland Security shall conduct an investiga-
17 tion, within the time periods specified in sub-
18 paragraphs (B) and (C), in order to ensure that
19 no fraudulent use of a social security account
20 number has taken place. If the Secretary has
21 selected a designee to establish and administer
22 the verification system, the designee shall notify
23 the Secretary when a single employer has sub-
24 mitted to the verification system pursuant to
25 subparagraph (A) the identical social security

1 account number in more than one instance, or
2 when multiple employers have submitted to the
3 verification system pursuant to such paragraph
4 the identical social security account number, in
5 a manner which indicates the possible fraudu-
6 lent use of that number. The designee shall also
7 provide the Secretary with all pertinent infor-
8 mation, including the name and address of the
9 employer or employers who submitted the rel-
10 evant social security account number, the rel-
11 evant social security account number submitted
12 by the employer or employers, and the relevant
13 name and date of birth of the employee sub-
14 mitted by the employer or employers.

15 “(G) UPDATING INFORMATION.—The
16 Commissioner of Social Security and the Sec-
17 retary of Homeland Security shall update their
18 information in a manner that promotes the
19 maximum accuracy and shall provide a process
20 for the prompt correction of erroneous informa-
21 tion, including instances in which it is brought
22 to their attention in the secondary verification
23 process described in subparagraph (C).

1 “(H) LIMITATION ON USE OF THE
2 VERIFICATION SYSTEM AND ANY RELATED SYS-
3 TEMS.—

4 “(i) IN GENERAL.—Notwithstanding
5 any other provision of law, nothing in this
6 paragraph shall be construed to permit or
7 allow any department, bureau, or other
8 agency of the United States Government to
9 utilize any information, database, or other
10 records assembled under this paragraph
11 for any other purpose other than as pro-
12 vided for.

13 “(ii) NO NATIONAL IDENTIFICATION
14 CARD.—Nothing in this paragraph shall be
15 construed to authorize, directly or indi-
16 rectly, the issuance or use of national iden-
17 tification cards or the establishment of a
18 national identification card.

19 “(I) FEDERAL TORT CLAIMS ACT.—If an
20 individual alleges that the individual would not
21 have been dismissed from a job but for an error
22 of the verification mechanism, the individual
23 may seek compensation only through the mech-
24 anism of the Federal Tort Claims Act, and in-
25 junctive relief to correct such error. No class

1 action may be brought under this subpara-
2 graph.

3 “(J) PROTECTION FROM LIABILITY FOR
4 ACTIONS TAKEN ON THE BASIS OF INFORMA-
5 TION.—No person or entity shall be civilly or
6 criminally liable for any action taken in good
7 faith reliance on information provided through
8 the employment eligibility verification mecha-
9 nism established under this paragraph.”.

10 (2) REPEAL OF PROVISION RELATING TO EVAL-
11 UATIONS AND CHANGES IN EMPLOYMENT
12 VERIFICATION.—Subsection (d) of such section is re-
13 pealed.

14 (b) EMPLOYMENT ELIGIBILITY VERIFICATION PROC-
15 ESS.—Such section is further amended—

16 (1) in subsection (a)(3), by designating the sen-
17 tence beginning with “A person” as a subparagraph
18 (A) with the heading “IN GENERAL.—”, and by add-
19 ing at the end the following:

20 “(B) FAILURE TO SEEK AND OBTAIN
21 VERIFICATION.—In the case of a person or enti-
22 ty in the United States that hires, or continues
23 to employ, an individual, or recruits or refers
24 an individual for employment, the following re-
25 quirements apply:

1 “(i) FAILURE TO SEEK
2 VERIFICATION.—

3 “(I) IN GENERAL.—If the person
4 or entity has not made an inquiry,
5 under the mechanism established
6 under subsection (b)(7), seeking
7 verification of the identity and work
8 eligibility of the individual, by not
9 later than the end of 3 working days
10 (as specified by the Secretary of
11 Homeland Security) after the date of
12 the hiring, the date specified in sub-
13 section (b)(8)(B) for previously hired
14 individuals, or before the recruiting or
15 referring commences, the defense
16 under subparagraph (A) shall not be
17 considered to apply with respect to
18 any employment, except as provided in
19 subclause (II).

20 “(II) SPECIAL RULE FOR FAIL-
21 URE OF VERIFICATION MECHANISM.—
22 If such a person or entity in good
23 faith attempts to make an inquiry in
24 order to qualify for the defense under
25 subparagraph (A) and the verification

1 mechanism has registered that not all
2 inquiries were responded to during the
3 relevant time, the person or entity can
4 make an inquiry until the end of the
5 first subsequent working day in which
6 the verification mechanism registers
7 no nonresponses and qualify for such
8 defense.

9 “(ii) FAILURE TO OBTAIN
10 VERIFICATION.—If the person or entity
11 has made the inquiry described in clause
12 (i)(I) but has not received an appropriate
13 verification of such identity and work eligi-
14 bility under such mechanism within the
15 time period specified under subsection
16 (b)(7)(B) after the time the verification in-
17 quiry was received, the defense under sub-
18 paragraph (A) shall not be considered to
19 apply with respect to any employment after
20 the end of such time period.”;

21 (2) by amending subparagraph (A) of sub-
22 section (b)(1) to read as follows:

23 “(A) IN GENERAL.—The person or entity
24 must attest, under penalty of perjury and on a
25 form designated or established by the Secretary

1 of Homeland Security by regulation, that it has
2 verified that the individual is not an unauthor-
3 ized alien—

4 “(i) by obtaining from the individual
5 the individual’s social security account
6 number and recording the number on the
7 form (if the individual claims to have been
8 issued such a number), and, if the indi-
9 vidual does not attest to United States citi-
10 zenship under paragraph (2), obtaining
11 such identification or authorization number
12 established by the Department of Home-
13 land Security for the alien as the Secretary
14 of Homeland Security may specify, and re-
15 cording such number on the form; and

16 “(ii)(I) by examining a document de-
17 scribed in subparagraph (B); or

18 “(II) by examining a document de-
19 scribed in subparagraph (C) and a docu-
20 ment described in subparagraph (D).

21 A person or entity has complied with the re-
22 quirement of this paragraph with respect to ex-
23 amination of a document if the document rea-
24 sonably appears on its face to be genuine, rea-
25 sonably appears to pertain to the individual

1 whose identity and work eligibility is being
2 verified, and, if the document bears an expira-
3 tion date, that expiration date has not elapsed.
4 If an individual provides a document (or com-
5 bination of documents) that reasonably appears
6 on its face to be genuine, reasonably appears to
7 pertain to the individual whose identity and
8 work eligibility is being verified, and is suffi-
9 cient to meet the first sentence of this para-
10 graph, nothing in this paragraph shall be con-
11 strued as requiring the person or entity to so-
12 licit the production of any other document or as
13 requiring the individual to produce another doc-
14 ument.”;

15 (3) in subsection (b)(1)(D)—

16 (A) in clause (i), by striking “or such other
17 personal identification information relating to
18 the individual as the Attorney General finds, by
19 regulation, sufficient for purposes of this sec-
20 tion”; and

21 (B) in clause (ii), by inserting before the
22 period “and that contains a photograph of the
23 individual”;

24 (4) in subsection (b)(2), by adding at the end
25 the following: “The individual must also provide that

1 individual's social security account number (if the
2 individual claims to have been issued such a num-
3 ber), and, if the individual does not attest to United
4 States citizenship under this paragraph, such identi-
5 fication or authorization number established by the
6 Department of Homeland Security for the alien as
7 the Secretary may specify.”; and

8 (5) by amending paragraph (3) of subsection
9 (b) to read as follows:

10 “(3) RETENTION OF VERIFICATION FORM AND
11 VERIFICATION.—

12 “(A) IN GENERAL.—After completion of
13 such form in accordance with paragraphs (1)
14 and (2), the person or entity must—

15 “(i) retain a paper, microfiche, micro-
16 film, or electronic version of the form and
17 make it available for inspection by officers
18 of the Department of Homeland Security,
19 the Special Counsel for Immigration-Re-
20 lated Unfair Employment Practices, or the
21 Department of Labor during a period be-
22 ginning on the date of the hiring, recruit-
23 ing, or referral of the individual or the
24 date of the completion of verification of a
25 previously hired individual and ending—

1 “(I) in the case of the recruiting
2 or referral of an individual, three
3 years after the date of the recruiting
4 or referral;

5 “(II) in the case of the hiring of
6 an individual, the later of—

7 “(aa) three years after the
8 date of such hiring; or

9 “(bb) one year after the
10 date the individual’s employment
11 is terminated; and

12 “(III) in the case of the
13 verification of a previously hired indi-
14 vidual, the later of—

15 “(aa) three years after the
16 date of the completion of
17 verification; or

18 “(bb) one year after the
19 date the individual’s employment
20 is terminated;

21 “(ii) make an inquiry, as provided in
22 paragraph (7), using the verification sys-
23 tem to seek verification of the identity and
24 employment eligibility of an individual, by
25 not later than the end of 3 working days

1 (as specified by the Secretary of Homeland
2 Security) after the date of the hiring or in
3 the case of previously hired individuals, the
4 date specified in paragraph (8)(B), or be-
5 fore the recruiting or referring commences;
6 and

7 “(iii) may not commence recruitment
8 or referral of the individual until the per-
9 son or entity receives verification under
10 subparagraph (B)(i) or (B)(iii).

11 “(B) VERIFICATION.—

12 “(i) VERIFICATION RECEIVED.—If the
13 person or other entity receives an appro-
14 priate verification of an individual’s iden-
15 tity and work eligibility under the
16 verification system within the time period
17 specified, the person or entity shall record
18 on the form an appropriate code that is
19 provided under the system and that indi-
20 cates a final verification of such identity
21 and work eligibility of the individual.

22 “(ii) TENTATIVE NONVERIFICATION
23 RECEIVED.—If the person or other entity
24 receives a tentative nonverification of an
25 individual’s identity or work eligibility

1 under the verification system within the
2 time period specified, the person or entity
3 shall so inform the individual for whom the
4 verification is sought. If the individual does
5 not contest the nonverification within the
6 time period specified, the nonverification
7 shall be considered final. The person or en-
8 tity shall then record on the form an ap-
9 propriate code which has been provided
10 under the system to indicate a tentative
11 nonverification. If the individual does con-
12 test the nonverification, the individual shall
13 utilize the process for secondary
14 verification provided under paragraph (7).
15 The nonverification will remain tentative
16 until a final verification or nonverification
17 is provided by the verification system with-
18 in the time period specified. In no case
19 shall an employer terminate employment of
20 an individual because of a failure of the in-
21 dividual to have identity and work eligi-
22 bility confirmed under this section until a
23 nonverification becomes final. Nothing in
24 this clause shall apply to a termination of

1 employment for any reason other than be-
2 cause of such a failure.

3 “(iii) FINAL VERIFICATION OR
4 NONVERIFICATION RECEIVED.—If a final
5 verification or nonverification is provided
6 by the verification system regarding an in-
7 dividual, the person or entity shall record
8 on the form an appropriate code that is
9 provided under the system and that indi-
10 cates a verification or nonverification of
11 identity and work eligibility of the indi-
12 vidual.

13 “(iv) EXTENSION OF TIME.—If the
14 person or other entity in good faith at-
15 tempts to make an inquiry during the time
16 period specified and the verification system
17 has registered that not all inquiries were
18 received during such time, the person or
19 entity may make an inquiry in the first
20 subsequent working day in which the
21 verification system registers that it has re-
22 ceived all inquiries. If the verification sys-
23 tem cannot receive inquiries at all times
24 during a day, the person or entity merely
25 has to assert that the entity attempted to

1 make the inquiry on that day for the pre-
2 vious sentence to apply to such an inquiry,
3 and does not have to provide any addi-
4 tional proof concerning such inquiry.

5 “(v) CONSEQUENCES OF
6 NONVERIFICATION.—

7 “(I) TERMINATION OR NOTIFICA-
8 TION OF CONTINUED EMPLOYMENT.—

9 If the person or other entity has re-
10 ceived a final nonverification regard-
11 ing an individual, the person or entity
12 may terminate employment of the in-
13 dividual (or decline to recruit or refer
14 the individual). If the person or entity
15 does not terminate employment of the
16 individual or proceeds to recruit or
17 refer the individual, the person or en-
18 tity shall notify the Secretary of
19 Homeland Security of such fact
20 through the verification system or in
21 such other manner as the Secretary
22 may specify.

23 “(II) FAILURE TO NOTIFY.—If
24 the person or entity fails to provide
25 notice with respect to an individual as

1 required under subclause (I), the fail-
 2 ure is deemed to constitute a violation
 3 of subsection (a)(1)(A) with respect to
 4 that individual.

5 “(vi) CONTINUED EMPLOYMENT
 6 AFTER FINAL NONVERIFICATION.—If the
 7 person or other entity continues to employ
 8 (or to recruit or refer) an individual after
 9 receiving final nonverification, a rebuttable
 10 presumption is created that the person or
 11 entity has violated subsection (a)(1)(A).”.

12 (c) EXPANSION OF EMPLOYMENT ELIGIBILITY
 13 VERIFICATION SYSTEM TO PREVIOUSLY HIRED INDIVID-
 14 UALS AND RECRUITING AND REFERRING.—

15 (1) APPLICATION TO RECRUITING AND REFER-
 16 RING.—Such section is further amended—

17 (A) in subsection (a)(1)(A), by striking
 18 “for a fee”;

19 (B) in subsection (a)(1), by amending sub-
 20 paragraph (B) to read as follows:

21 “(B) to hire, continue to employ, or to re-
 22 cruit or refer for employment in the United
 23 States an individual without complying with the
 24 requirements of subsection (b).”;

1 (C) in subsection (a)(2) by striking “after
2 hiring an alien for employment in accordance
3 with paragraph (1),” and inserting “after com-
4 plying with paragraph (1),”; and

5 (D) in subsection (a)(3)(A), as amended by
6 subsection (b)(1), by striking “hiring,” and in-
7 serting “hiring, employing,” each place it ap-
8 pears.

9 (2) EMPLOYMENT ELIGIBILITY VERIFICATION
10 FOR PREVIOUSLY HIRED INDIVIDUALS.—Subsection
11 (b) of such section, as amended by subsection (a)(1),
12 is amended by adding at the end the following new
13 paragraph:

14 “(8) USE OF EMPLOYMENT ELIGIBILITY
15 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-
16 DIVIDUALS.—

17 “(A) ON A VOLUNTARY BASIS.—Beginning
18 on the date that is 2 years after the date of the
19 enactment of this paragraph and until the date
20 specified in subparagraph (B)(iii), a person or
21 entity may make an inquiry, as provided in
22 paragraph (7), using the verification system to
23 seek verification of the identity and employment
24 eligibility of any individual employed by the per-

son or entity, as long as it is done on a non-discriminatory basis.

“(B) ON A MANDATORY BASIS.—

“(i) IN GENERAL.—A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date three years after the date of the enactment of this paragraph.

“(ii) PERSON OR ENTITY DESCRIBED.—A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42

1 U.S.C. 5195c(e))), but only to the extent
 2 of such individuals.

3 “(iii) OTHER ENTITIES.—All persons
 4 and entities other than those described in
 5 clause (ii) must make an inquiry, as pro-
 6 vided in paragraph (7), using the
 7 verification system to seek verification of
 8 the identity and employment eligibility of
 9 all individuals employed by the person or
 10 entity who have not been previously subject
 11 to an inquiry by the person or entity by
 12 the date six years after the date of the en-
 13 actment of this paragraph.”.

14 **SEC. 4. EXPEDITED REMOVAL.**

15 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the
 16 Immigration and Nationality Act (8 U.S.C.
 17 1225(b)(1)(A)(iii)) is amended—

18 (1) in subclause (I), by striking “Attorney Gen-
 19 eral” and inserting “Secretary of Homeland Secu-
 20 rity” each place it appears; and

21 (2) by adding at the end the following new sub-
 22 clause:

23 “(III) EXCEPTION.—Notwith-
 24 standing subclauses (I) and (II), the
 25 Secretary of Homeland Security shall

1 apply clauses (i) and (ii) of this sub-
2 paragraph to any alien (other than an
3 alien described in subparagraph (F))
4 who is not a national of a country
5 contiguous to the United States, who
6 has not been admitted or paroled into
7 the United States, and who is appre-
8 hended within 100 miles of a port or
9 an international land border of the
10 United States and within 14 days of
11 entry.”.

12 (b) EXCEPTIONS.—Section 235(b)(1)(F) of the Im-
13 migration and Nationality Act (8 U.S.C. 1225(b)(1)(F))
14 is amended by striking “who arrives by aircraft at a port
15 of entry” and inserting “, and who arrives by aircraft at
16 a port of entry or who is present in the United States
17 and arrived in any manner at or between a port of entry”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act and shall apply to all aliens apprehended on
21 or after such date.

22 **SEC. 5. NONIMMIGRANT SEASONAL AGRICULTURAL PRO-**
23 **GRAM.**

24 (a) PROVIDING NEW “W” NONIMMIGRANT CLASSI-
25 FICATION FOR SEASONAL AGRICULTURAL WORKERS.—

1 Section 101(a)(15) of the Immigration and Nationality
2 Act (8 U.S.C. 1101(a)(15)) is amended—

3 (1) by striking out “or” at the end of subpara-
4 graph (U);

5 (2) by striking the period at the end of sub-
6 paragraph (V) and inserting “; or”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(W) an alien having a residence in a for-
10 eign country which the alien has no intention of
11 abandoning who is coming to the United States
12 for a period of not longer than 10 consecutive
13 months to perform services or labor in agricul-
14 tural employment (as defined to mean any serv-
15 ice or activity that is considered to be agricul-
16 tural under section 3(f) of the Fair Labor
17 Standards Act of 1938 (29 U.S.C. 203(f), or
18 agricultural labor under section 3121(g) of the
19 Internal Revenue Code of 1986 (26 U.S.C.
20 3121(g)).”.

21 (b) ESTABLISHMENT OF NONIMMIGRANT SEASONAL
22 AGRICULTURAL WORKER PROGRAM.—

23 (1) IN GENERAL.—Chapter 2 of title II of such
24 Act is amended by adding at the end the following
25 new section:

1 “NONIMMIGRANT SEASONAL AGRICULTURAL WORKER
2 PROGRAM

3 “SEC. 220. (a) ESTABLISHMENT OF PROGRAM.—

4 “(1) IN GENERAL.—The Secretary of Agri-
5 culture, in consultation with the Secretary of Labor,
6 shall by regulation establish a program (in this sec-
7 tion referred to as the ‘program’) for the admission
8 into the United States of nonimmigrants described
9 in section 101(a)(15)(W) (in this section referred to
10 as a ‘seasonal agricultural worker’).

11 “(2) COMPONENTS OF PROGRAM.—The pro-
12 gram shall include the imposition of monthly and
13 annual numerical limitations, established under sub-
14 section (c), on the issuance of nonimmigrant visas
15 for seasonal agricultural worker by agricultural em-
16 ployment region. These visas shall be made available
17 subject to such limitations to such workers in ac-
18 cordance with the preference system established
19 under subsection (d).

20 “(3) FREEDOM TO BE EMPLOYED WITHIN AGRI-
21 CULTURAL EMPLOYMENT REGIONS.—Except as pro-
22 vided under subsection (e), such a nonimmigrant
23 visa shall not limit the geographical area (other than
24 by regions established under paragraph (4)) within
25 which an alien may be employed or limit the type of

1 agricultural employment, within the production of
2 agricultural commodities, the alien may perform.

3 “(4) DESIGNATION OF AGRICULTURAL EMPLOY-
4 MENT REGIONS.—For purposes of administering the
5 program, the Secretary of Agriculture shall des-
6 ignate not more than 10 agricultural employment re-
7 gions within the United States.

8 “(b) APPLICATION FOR WORKERS.—

9 “(1) IN GENERAL.—Each person who employs
10 individuals to perform agricultural employment (in-
11 cluding an association of such persons and a person
12 who contracts for the performance of seasonal agri-
13 cultural work) in the production of agricultural com-
14 modities may submit to the Secretary of Agriculture,
15 at such time and in such manner as the Secretary
16 specifies, an application for seasonal agricultural
17 workers.

18 “(2) INFORMATION REQUIRED.—The applica-
19 tion must specify, for each month concerned and for
20 the agricultural employment region in which the per-
21 son is located—

22 “(A) the total number and qualifications of
23 seasonal agricultural workers required in the
24 production of agricultural commodities in each
25 month; and

1 “(B) the type of agricultural work required
2 to be performed by these workers.

3 “(3) OPTIONAL INFORMATION ON ALIENS PRE-
4 FERRED.—The person may also include a statement
5 indicating a preference as to country of nationality
6 of aliens (or names of particular aliens) desired to
7 perform labor in any such month.

8 “(c) DETERMINATION OF QUOTA BY AGRICULTURAL
9 REGION AND MONTH.—

10 “(1) IN GENERAL.—Based upon such applica-
11 tions, taking into consideration the historical em-
12 ployment needs of agricultural employers and the
13 availability of domestic agricultural labor, and after
14 consultation with the Secretary of Labor, the Sec-
15 retary of Agriculture shall establish a numerical lim-
16 itation, by month and by agricultural employment
17 region, on the issuance of nonimmigrant visas to
18 seasonal agricultural workers.

19 “(2) APPLICATION FOR AN INCREASE WHERE
20 EXTRAORDINARY AND UNUSUAL CIRCUMSTANCES.—

21 “(A) IN GENERAL.—If an agricultural em-
22 ployer (or association or representative thereof)
23 establishes that extraordinary and unusual cir-
24 cumstances have resulted in a significant
25 change—

1 “(i) in the employer’s need for sea-
2 sonal agricultural workers specified in the
3 application; or

4 “(ii) in the availability of domestic
5 workers who are able, willing, and qualified
6 to perform seasonal agricultural employ-
7 ment,

8 the employer may apply to the Secretary of Ag-
9 riculture (in such form and manner as the Sec-
10 retary shall provide) for an increase in the nu-
11 merical limitations otherwise established under
12 paragraph (1) to accommodate such emergency
13 need..

14 “(B) TIMELY DETERMINATION ON APPLI-
15 CATION.—The Secretary of Agriculture shall
16 make a determination on an application under
17 subparagraph (A) within 72 hours of the date
18 the application is completed.

19 “(C) INCREASE IN QUOTA.—To the extent
20 the application is approved, the Secretary of
21 Agriculture shall provide for an appropriate in-
22 crease in the appropriate numerical limitation.

23 “(d) ALLOCATION OF VISAS.—

24 “(1) PREFERENCE SYSTEM.—Seasonal agricul-
25 tural workers who are subject to the numerical limi-

1 tations specified in subsection (c) shall be allotted
2 nonimmigrant visas as follows:

3 “(A) IDENTIFIED WORKERS.—Visas shall
4 first be made available to qualified seasonal ag-
5 ricultural workers specifically identified in peti-
6 tions submitted under subsection (b)(3).

7 “(B) PREVIOUSLY EMPLOYED WORKERS.—
8 Visas shall next be made available to qualified
9 seasonal agricultural workers who have pre-
10 viously been employed in seasonal agricultural
11 employment in the United States, providing pri-
12 ority in consideration among such workers in
13 the order of the length of time in which they
14 were so employed.

15 “(C) ORDER IN WHICH APPLIED.—The re-
16 maining visas shall be made available to other
17 qualified seasonal agricultural workers strictly
18 in the chronological order in which they qualify.
19 Waiting lists of applicants shall be maintained
20 in accordance with regulations prescribed by the
21 Secretary of State.

22 “(2) TREATMENT OF SPOUSE AND CHIL-
23 DREN.—A spouse or child of such a worker is not
24 entitled to a visa or such status by virtue of such
25 relationship, but may be provided the same status as

1 such a worker if the spouse or child also is a quali-
2 fied seasonal agricultural worker to perform seasonal
3 agricultural employment.

4 “(e) STANDARDS FOR APPROVAL OF APPLICA-
5 TIONS.—

6 “(1) IN GENERAL.—The Secretary of Agri-
7 culture shall approve an application submitted under
8 subsection (b)(1) authorizing a person to employ a
9 seasonal agricultural worker if—

10 “(A) the person is a producer, and the
11 worker is to be employed in seasonal agricul-
12 tural work;

13 “(B) the application complies with the pro-
14 visions of such subsection and the application
15 sets forth the need for such workers;

16 “(C) the person has not employed or peti-
17 tioned for a nonimmigrant described in section
18 101(a)(15)(H)(ii)(a) at the time when an appli-
19 cation on behalf of the person is pending or ap-
20 proved under this subsection, or during any
21 previous period during which the employer had
22 an application approved under this section; and

23 “(D) the person is not disqualified under
24 subsection (f).

1 “(2) REVIEW OF CERTAIN DENIALS.—Except as
2 provided under subsection (f), a person who is deter-
3 mined not to be eligible under paragraph (1) (other
4 than because of subparagraph (D) thereof) is enti-
5 tled to an expedited review of the determination by
6 the Secretary of Agriculture.

7 “(3) CIVIL PENALTIES FOR UNLAWFUL EM-
8 PLOYMENT OF SEASONAL AGRICULTURAL WORK-
9 ERS.—

10 “(A) IN GENERAL.—It is unlawful for a
11 person or other entity to hire, or recruit or
12 refer, for employment in the United States a
13 seasonal agricultural worker unless the person
14 or entity has an application approved under
15 paragraph (1) with respect to the hiring of the
16 worker.

17 “(B) CIVIL PENALTY.—A person or entity
18 that violates subparagraph (A) shall be subject
19 to an order described in section 274A(e)(4). in-
20 cluding the imposition of a civil money penalty,
21 in the same manner as such section applies to
22 a violation described in section 274A(a)(2).

23 “(f) OBLIGATIONS UNDER PROGRAM.—Any person
24 whose application to employ a seasonal agricultural worker
25 has been approved shall provide as follows:

1 “(1) NO DISPLACEMENT OF UNITED STATES
2 WORKERS.—The employer did not displace and will
3 not displace a United States worker employed by the
4 employer during the period of employment and for
5 a period of 30 days preceding the period of employ-
6 ment in the occupation at the place of employment
7 for which the employer seeks to employ non-
8 immigrant agricultural workers.

9 “(2) OFFERS TO UNITED STATES WORKERS.—
10 The employer shall offer the job to any eligible
11 United States worker who applies and is equally or
12 better qualified for the job for which the non-
13 immigrant is, or the nonimmigrants are sought, and
14 will be available at the time and place of need.

15 “(3) USE OF HOUSING ALLOWANCE.—An em-
16 ployer shall offer to provide housing at no cost to all
17 workers for which the employer has applied under
18 the program and to all other workers in the same oc-
19 cupation at the place of employment, whose place of
20 residence is beyond normal commuting distance. The
21 employer may comply with this requirement respect-
22 ing the furnishing of housing for such employee by
23 providing a reasonable housing allowance instead of
24 offering housing. Upon the request of a worker seek-
25 ing assistance in locating housing, the employer shall

1 make a good faith effort to assist the worker in
2 identifying and locating housing in the area of in-
3 tended employment. An employer who offers a hous-
4 ing allowance to a worker, or assists a worker in lo-
5 cating housing which the worker occupies, pursuant
6 to this clause shall not be deemed a housing provider
7 under section 203 of the Migrant and Seasonal Agri-
8 cultural worker Protection Act (29 U.S.C. 1823)
9 solely by providing such housing allowance. No hous-
10 ing allowance may be used for housing which is
11 owned or controlled by the employer.

12 “(4) WORKERS’ COMPENSATION.—The person
13 shall provide (if the employment is not covered by
14 State workers’ compensation law), at no cost to the
15 worker, insurance covering injury and disease aris-
16 ing out of and in the course of the workers employ-
17 ment which will provide benefits at least equal to
18 those provided under the State workers’ compensa-
19 tion law for comparable employment.

20 “(5) LABOR DISPUTE.—The person shall not
21 employ a seasonal agricultural worker for a specific
22 job opportunity for which the employer is requesting
23 a seasonal agricultural worker because the former
24 occupant of the job is on strike or being locked out
25 in the course of a labor dispute.

1 “(6) NOT USE FOR NONAGRICULTURAL SERV-
2 ICES.—The person shall not employ a seasonal agri-
3 cultural worker for services other than seasonal agri-
4 cultural services.

5 “(7) DISQUALIFICATION FOR VIOLATIONS.—If
6 the Secretary of Agriculture determines, after oppor-
7 tunity for a hearing, that an employer has partici-
8 pated under the program and has violated a provi-
9 sion of paragraph (1) or any other provision of this
10 Act, the employer shall be disqualified from future
11 participation in the program for a period of not
12 longer than three years.

13 “(g) ENTRY OF WORKERS.—

14 “(1) IN GENERAL.—An alien may not be admit-
15 ted to the United States as a seasonal agricultural
16 worker during the five-year period beginning on the
17 most recent date (if any) on which the alien violated
18 a term or condition of a previous admission as such
19 a worker or who enters the United States unlawfully
20 after the date the program first takes effect.

21 “(2) MONITORING.—The Secretary of Agri-
22 culture, in consultation with the Secretary of Labor,
23 shall monitor terms and conditions under which sea-
24 sonal agricultural workers (and domestic workers

1 employed by the same employers) are employed in
2 the United States.

3 “(h) TRUST FUND FOR PROGRAM.—

4 “(1) ESTABLISHMENT.—The Secretary of Agri-
5 culture shall establish by regulation a trust fund the
6 purpose of which is to provide funds for the adminis-
7 tration and enforcement of the program and to pro-
8 vide a monetary incentive for seasonal agricultural
9 workers to return to their country of origin upon ex-
10 piration of their visas under the program. The Sec-
11 retary of Agriculture in consultation with the Sec-
12 retary of the Treasury shall promulgate such other
13 regulations as may be necessary to carry out this
14 subsection.

15 “(2) PAYMENT OF FICA AND FUTA AMOUNTS
16 INTO TRUST FUND.—In the case of employment of
17 a seasonal agricultural worker—

18 “(A) the employer shall provide for pay-
19 ment into the trust fund established under this
20 subsection of the sum of—

21 “(i) an amount equivalent to the
22 amount of excise taxes which the employer
23 would pay under the Federal Insurance
24 Contributions Act with respect to such em-

1 ployment if it were considered employment
2 for the purpose of such Act; and

3 “(ii) an amount equivalent to (and in
4 lieu of) the amount of excise taxes which
5 the employer would otherwise pay under
6 the Federal Unemployment Tax Act with
7 respect to such employment; and

8 “(B) there shall be deducted from the
9 wages of the worker and paid into such trust
10 fund an amount equivalent to the amount of ex-
11 cise taxes that the employee would pay under
12 the Federal Insurance Contributions Act with
13 respect to such employment if it were consid-
14 ered employment for the purposes of such Act.

15 “(3) EXPENDITURES FROM TRUST FUND.—

16 “(A) USE OF EMPLOYER CONTRIBUTIONS
17 FOR ADMINISTRATION.—Amounts described in
18 paragraph (2)(A) paid into the trust fund shall
19 be used for the purpose of administering and
20 enforcing the program.

21 “(B) REPAYMENT OF EMPLOYEE CON-
22 TRIBUTIONS UPON RETURN TO COUNTRY OF
23 ORIGIN.—Amounts described in paragraph
24 (2)(B) paid into the trust fund with respect to
25 a seasonal agricultural worker shall, upon appli-

1 cation by the worker at the United States con-
2 sulate nearest the worker’s residence in the
3 country of origin, be paid to the worker if the
4 worker demonstrates the compliance of the
5 worker with the terms and conditions of the
6 program.

7 “(i) SEMIANNUAL REPORTS TO CONGRESS.—The
8 Secretary of Agriculture in consultation with the Secretary
9 of Labor, shall report to Congress semiannually regarding
10 the program. Each such report shall include a statement
11 of the number of nonimmigrant visas issued under the
12 program, an evaluation of the effectiveness of the pro-
13 gram, a description of any problems related to the enforce-
14 ment of the program, and any recommendations for legis-
15 lation relating to the program.

16 “(j) MISCELLANEOUS PROVISIONS.—

17 “(1) DISQUALIFICATION OF SEASONAL AGRI-
18 CULTURAL WORKERS FROM FINANCIAL ASSIST-
19 ANCE.—An alien admitted as a seasonal agricultural
20 worker is not eligible for any program of financial
21 assistance under Federal law (whether through
22 grant, loan, guarantee, or otherwise) on the basis of
23 financial need, as such programs are identified by
24 the Secretary of Agriculture in consultation with

1 other appropriate heads of the various departments
2 and agencies of Government.

3 “(2) EXPANSION OF CONSULATES.—The Sec-
4 retary of State is authorized to take such steps as
5 may be necessary in order to expand and establish
6 consulates in foreign countries in which aliens are
7 likely to apply to become seasonal agricultural work-
8 ers under the program.

9 “(3) PREEMPTION.—The provisions of this sec-
10 tion preempt any State or local law on the same sub-
11 ject.”.

12 (2) CLERICAL AMENDMENT.—The table of con-
13 tents of such Act is amended by inserting after the
14 item relating to section 219 the following new item:

“Sec. 220. Nonimmigrant seasonal agricultural program.”.

15 (c) SENSE OF CONGRESS CONCERNING BILATERAL
16 ADVISORY COMMISSIONS.—It is the sense of Congress
17 that the President should negotiate with representatives
18 of the governments of labor source countries to establish
19 bilateral advisory commissions in order to consult with and
20 advise the Secretary of Agriculture and the Secretary of
21 State regarding—

- 22 (1) the regulations to be promulgated;
23 (2) the monthly and annual numerical limita-
24 tions to be established

1 (3) the entry, and preference, and visa issuance
2 systems to be established; and

3 (4) problems arising under the program estab-
4 lished;
5 under section 220 of the Immigration and Nationality Act,
6 as added by subsection (a).

7 (d) IMMIGRATION AMENDMENTS PROHIBITING AD-
8 JUSTMENT OF STATUS OF SEASONAL AGRICULTURAL
9 WORKERS.—

10 (1) The first sentence of section 204(a)(1)(F)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1154(a)(1)(F)) is amended by inserting before the
13 period the following: “, except that no petition for a
14 preference immigrant under section 203(b) may be
15 filed respecting an alien who is a nonimmigrant de-
16 scribed in section 101(a)(15)(W)”.

17 (2) Section 237(a)(1)(C) of such Act (8 U.S.C.
18 1227(a)(1)(C)) is amended by adding at the end the
19 following new clause:

20 “(iii) SEASONAL AGRICULTURAL
21 WORKERS.—An alien who is admitted as a
22 nonimmigrant under section
23 101(a)(15)(W) who fails to be continuously
24 employed or actively seeking employment
25 in agricultural labor or services in accord-

1 ance with the usual customary employment
2 patterns and practices is deportable.”.

3 (3) PROHIBITION OF ADJUSTMENT OR CHANGE
4 OF STATUS.—

5 (A) IMMIGRANT STATUS.—Section
6 245(b)(5) of such Act (8 U.S.C. 1255(b)(5)) is
7 amended by inserting “or section
8 101(a)(15)(W)” after “section 101(a)(15)(S)”.

9 (B) NONIMMIGRANT STATUS.—Section
10 248(1) of such Act (8 U.S.C. 1258(1)) is
11 amended by striking “or (S)” and inserting
12 “(S), or (W)”.

13 (4) PROHIBITION OF COUNTING OF PERIOD OF
14 TIME AS A SEASONAL AGRICULTURAL WORKER FOR
15 PURPOSES OF CANCELLATION OF REMOVAL.—Sec-
16 tion 240A(d) of such Act (8 U.S.C. 1229b(d)) is
17 amended by adding at the end the following new
18 paragraph:

19 “(4) TREATMENT OF SEASONAL AGRICULTURAL
20 WORKERS.—No period of time in which an alien is
21 residing or present in the United States as a sea-
22 sonal agricultural worker under section
23 101(a)(15)(W) shall be taken into account for pur-
24 poses of this section.”.

1 **SEC. 6. LAWFUL STATUS FOR CERTAIN LONG-TERM RESI-**
2 **DENT ALIENS.**

3 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
4 gration and Nationality Act is amended by inserting after
5 section 245A the following new section:

6 “LAWFUL STATUS FOR CERTAIN LONG-TERM RESIDENT
7 ALIENS

8 “SEC. 245B. (a) LAWFUL STATUS.—The Secretary
9 of Homeland Security shall adjust the status of an alien
10 to that of an alien lawfully admitted to the United States
11 if the alien meets the following requirements:

12 “(1) TIMELY APPLICATION.—

13 “(A) DURING APPLICATION PERIOD.—Ex-
14 cept as provided in subparagraph (B), the alien
15 must apply for such adjustment during the 12-
16 month period beginning on a date (not later
17 than 180 days after the date of enactment of
18 this section) designated by the Secretary.

19 “(B) APPLICATION WITHIN 30 DAYS OF
20 NOTICE TO APPEAR.—An alien who, at any time
21 during the first 11 months of the 12-month pe-
22 riod described in subparagraph (A), is the sub-
23 ject of a notice to appear issued under section
24 239, must make application under this section
25 not later than the end of the 30-day period be-
26 ginning either on the first day of such 12-

1 month period or on the date of the issuance of
2 such notice, whichever day is later.

3 “(C) INFORMATION INCLUDED IN APPLICA-
4 TION.—Each application under this subsection
5 shall contain such information as the Secretary
6 of Homeland Security may require.

7 “(2) CONTINUOUS UNLAWFUL RESIDENCE
8 SINCE JANUARY 1, 2002.—

9 “(A) IN GENERAL.—The alien must estab-
10 lish that the alien entered the United States be-
11 fore January 1, 2002, and that he has resided
12 continuously in the United States in an unlaw-
13 ful status since such date and through the date
14 the application is filed under this subsection.

15 “(B) NONIMMIGRANTS.—In the case of an
16 alien who entered the United States as a non-
17 immigrant before January 1, 2002, the alien
18 must establish that the alien’s period of author-
19 ized stay as a nonimmigrant expired before
20 such date through the passage of time or the
21 alien’s unlawful status was known to the Gov-
22 ernment as of such date.

23 “(C) EXCHANGE VISITORS.—If the alien
24 was at any time a nonimmigrant exchange alien
25 (as defined in section 101(a)(15)(J)), the alien

1 must establish that the alien was not subject to
2 the two-year foreign residence requirement of
3 section 212(e) or has fulfilled that requirement
4 or received a waiver thereof.

5 “(3) CONTINUOUS PHYSICAL PRESENCE SINCE
6 ENACTMENT.—

7 “(A) IN GENERAL.—The alien must estab-
8 lish that the alien has been continuously phys-
9 ically present in the United States since the
10 date of the enactment of this section.

11 “(B) TREATMENT OF BRIEF, CASUAL, AND
12 INNOCENT ABSENCES.—An alien shall not be
13 considered to have failed to maintained contin-
14 uous physical presence in the United States for
15 purposes of subparagraph (A) by virtue of brief,
16 casual, and innocent absences from the United
17 States.

18 “(C) ADMISSIONS.—Nothing in this section
19 shall be construed as authorizing an alien to
20 apply for admission to, or to be admitted to, the
21 United States in order to apply for adjustment
22 of status under this subsection.

23 “(4) ADMISSIBLE AS IMMIGRANT.—The alien
24 must establish that the alien—

1 “(A) is admissible to the United States as
2 an immigrant, except as otherwise provided
3 under subsection (d),

4 “(B) has not been convicted of any felony
5 or of two or more misdemeanors committed in
6 the United States, and

7 “(C) has not assisted in the persecution of
8 any person or persons on account of race, reli-
9 gion, nationality, membership in a particular
10 social group, or political opinion.

11 “(5) BASIC CITIZENSHIP SKILLS.—

12 “(A) IN GENERAL.—The alien must dem-
13 onstrate that the alien either—

14 “(i) meets the requirements of section
15 312(a) (relating to minimal understanding
16 of ordinary English and a knowledge and
17 understanding of the history and govern-
18 ment of the United States), or

19 “(ii) is satisfactorily pursuing a
20 course of study (recognized by the Sec-
21 retary of Homeland Security) to achieve
22 such an understanding of English and
23 such a knowledge and understanding of the
24 history and government of the United
25 States.

1 “(B) EXCEPTION FOR ELDERLY OR DE-
2 VELOPMENTALLY DISABLED INDIVIDUALS.—

3 The Secretary of Homeland Security may, in
4 his discretion, waive all or part of the require-
5 ments of subparagraph (A) in the case of an
6 alien who is 65 years of age or older or who is
7 developmentally disabled.

8 “(6) PAYMENT OF FINE.—The alien must pay
9 to the Secretary of Homeland Security a fine in the
10 amount of \$1,000.

11 “(b) NATURE OF LAWFUL STATUS.—

12 “(1) NOT LAWFUL PERMANENT RESIDENT STA-
13 TUS AND INELIGIBLE TO ADJUST UNDER SECTION
14 245, BUT ELIGIBLE TO SEE LPR STATUS OTHER-
15 WISE.—An alien provided lawful status under sub-
16 section (a)—

17 “(A) shall not be considered to be an alien
18 lawfully admitted for permanent residence;

19 “(B) is not eligible to adjust status under
20 section 245; and

21 “(C) may seek to obtain lawful permanent
22 resident status under other provisions of law,
23 such as by qualifying for an immigrant visa
24 through a consular office abroad under the reg-
25 ular immigration process.

1 “(2) TERMINATION OF LAWFUL STATUS.—The
2 Secretary of Homeland Security shall provide for
3 termination of lawful status granted an alien under
4 subsection (a)—

5 “(A) if it appears to the Secretary of
6 Homeland Security that the alien was in fact
7 not eligible for such status;

8 “(B) if the alien commits an act that (i)
9 makes the alien inadmissible to the United
10 States as an immigrant, except as otherwise
11 provided under subsection (d)(2), or (ii) is con-
12 victed of any felony or two or more mis-
13 demeanors committed in the United States; or

14 “(C) if and when such alien obtains lawful
15 permanent resident status under law.

16 “(3) AUTHORIZED TRAVEL AND EMPLOYMENT
17 DURING LAWFUL STATUS.—During the period an
18 alien is in lawful status granted under subsection
19 (a)—

20 “(A) AUTHORIZATION OF TRAVEL
21 ABROAD.—The Secretary of Homeland Security
22 shall, in accordance with regulations, permit the
23 alien to return to the United States after such
24 brief and casual trips abroad as reflect an in-
25 tention on the part of the alien not to relinquish

1 lawful status and after brief temporary trips
2 abroad occasioned by a family obligation involv-
3 ing an occurrence such as the illness or death
4 of a close relative or other family need.

5 “(B) AUTHORIZATION OF EMPLOYMENT.—

6 The Secretary of Homeland Security shall grant
7 the alien authorization to engage in employment
8 in the United States and provide to that alien
9 an ‘employment authorized’ endorsement or
10 other appropriate work permit.

11 “(4) NO DERIVATIVE TREATMENT OF REL-
12 ATIVES.—A spouse, child, or other relative of an
13 alien who obtains lawful status under subsection (a)
14 is not entitled to such status by virtue of such rela-
15 tionship, but may be provided the same status as
16 such an alien if the spouse, child, or other relative
17 also qualifies under such subsection for such lawful
18 status.

19 “(c) APPLICATIONS FOR ADJUSTMENT TO LAWFUL
20 STATUS.—

21 “(1) TO WHOM MAY BE MADE.—The Secretary
22 of Homeland Security shall provide that applications
23 for adjustment of status under subsection (a) shall
24 be filed with the Secretary.

25 “(2) CONFIDENTIALITY OF INFORMATION.—

1 “(A) IN GENERAL.—Except as provided in
2 this paragraph, neither the Secretary of Home-
3 land Security, nor any other official or em-
4 ployee of the Department of Justice, or bureau
5 or agency thereof, may—

6 “(i) use the information furnished by
7 the applicant pursuant to an application
8 filed under this section for any purpose
9 other than to make a determination on the
10 application or for enforcement of para-
11 graph (3);

12 “(ii) make any publication whereby
13 the information furnished by any par-
14 ticular applicant can be identified; or

15 “(iii) permit anyone other than the
16 sworn officers and employees of the De-
17 partment or bureau or agency or, with re-
18 spect to applications filed with a des-
19 ignated entity, that designated entity, to
20 examine individual applications.

21 “(B) REQUIRED DISCLOSURES.—The Sec-
22 retary of Homeland Security shall provide the
23 information furnished under this section, and
24 any other information derived from such fur-
25 nished information, to a duly recognized law en-

1 forcement entity in connection with a criminal
2 investigation or prosecution, when such infor-
3 mation is requested in writing by such entity,
4 or to an official coroner for purposes of affirm-
5 atively identifying a deceased individual (wheth-
6 er or not such individual is deceased as a result
7 of a crime).

8 “(C) AUTHORIZED DISCLOSURES.—The
9 Secretary of Homeland Security may provide, in
10 the Secretary of Homeland Security’s discre-
11 tion, for the furnishing of information furnished
12 under this section in the same manner and cir-
13 cumstances as census information may be dis-
14 closed by the Secretary of Commerce under sec-
15 tion 8 of title 13, United States Code.

16 “(D) CONSTRUCTION.—

17 “(i) IN GENERAL.—Nothing in this
18 paragraph shall be construed to limit the
19 use, or release, for immigration enforce-
20 ment purposes or law enforcement pur-
21 poses of information contained in files or
22 records of the Department of Homeland
23 Security pertaining to an application filed
24 under this section, other than information
25 furnished by an applicant pursuant to the

1 application, or any other information de-
2 rived from the application, that is not
3 available from any other source.

4 “(ii) CRIMINAL CONVICTIONS.—Infor-
5 mation concerning whether the applicant
6 has at any time been convicted of a crime
7 may be used or released for immigration
8 enforcement or law enforcement purposes.

9 “(E) CRIME.—Whoever knowingly uses,
10 publishes, or permits information to be exam-
11 ined in violation of this paragraph shall be fined
12 not more than \$10,000.

13 “(3) PENALTIES FOR FALSE STATEMENTS IN
14 APPLICATIONS.—Whoever files an application for ad-
15 justment of status under this section and knowingly
16 and willfully falsifies, misrepresents, conceals, or
17 covers up a material fact or makes any false, ficti-
18 tious, or fraudulent statements or representations,
19 or makes or uses any false writing or document
20 knowing the same to contain any false, fictitious, or
21 fraudulent statement or entry, shall be ineligible for
22 adjustment of status under this section and shall be
23 fined in accordance with title 18, United States
24 Code, or imprisoned not more than five years, or
25 both.

1 “(4) APPLICATION FEES.—

2 “(A) FEE SCHEDULE.—The Secretary of
3 Homeland Security shall provide for a schedule
4 of fees to be charged for the filing of applica-
5 tions for adjustment under subsection (a).

6 “(B) USE OF FEES.—The Secretary of
7 Homeland Security shall deposit payments re-
8 ceived under this paragraph in a separate ac-
9 count and amounts in such account shall be
10 available, without fiscal year limitation, to cover
11 administrative and other expenses incurred in
12 connection with the review of applications filed
13 under this section.

14 “(d) WAIVER OF CERTAIN GROUNDS FOR EXCLU-
15 SION.—In the determination of an alien’s admissibility
16 under subsection (a)(4)(A), the provisions of paragraphs
17 (5), (6)(A), and (7)(A) of section 212(a) shall not apply.

18 “(e) TEMPORARY STAY OF DEPORTATION AND WORK
19 AUTHORIZATION FOR CERTAIN APPLICANTS.—

20 “(1) BEFORE APPLICATION PERIOD.—The Sec-
21 retary of Homeland Security shall provide that in
22 the case of an alien who is apprehended before the
23 beginning of the application period described in sub-
24 section (a)(1)(A) and who can establish a prima
25 facie case of eligibility to have his status adjusted

1 under subsection (a) (but for the fact that he may
2 not apply for such adjustment until the beginning of
3 such period), until the alien has had the opportunity
4 during the first 30 days of the application period to
5 complete the filing of an application for adjustment,
6 the alien—

7 “(A) may not be deported, and

8 “(B) shall be granted authorization to en-
9 gage in employment in the United States and
10 be provided an ‘employment authorized’ en-
11 dorsement or other appropriate work permit.

12 “(2) DURING APPLICATION PERIOD.—The Sec-
13 retary of Homeland Security shall provide that in
14 the case of an alien who presents a prima facie ap-
15 plication for adjustment of status under subsection
16 (a) during the application period, and until a final
17 determination on the application has been made in
18 accordance with this section, the alien—

19 “(A) may not be deported, and

20 “(B) shall be granted authorization to en-
21 gage in employment in the United States and
22 be provided an ‘employment authorized’ en-
23 dorsement or other appropriate work permit.

24 “(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

1 “(1) ADMINISTRATIVE AND JUDICIAL RE-
2 VIEW.—There shall be no administrative or judicial
3 review of a determination respecting an application
4 for adjustment of status under this section except in
5 accordance with this subsection.

6 “(2) NO REVIEW FOR LATE FILINGS.—No de-
7 nial of adjustment of status under this section based
8 on a late filing of an application for such adjustment
9 may be reviewed by a court of the United States or
10 of any State or reviewed in any administrative pro-
11 ceeding of the United States Government.

12 “(3) ADMINISTRATIVE REVIEW.—

13 “(A) SINGLE LEVEL OF ADMINISTRATIVE
14 APPELLATE REVIEW.—The Secretary of Home-
15 land Security shall establish an appellate au-
16 thority to provide for a single level of adminis-
17 trative appellate review of a determination de-
18 scribed in paragraph (1).

19 “(B) STANDARD FOR REVIEW.—Such ad-
20 ministrative appellate review shall be based
21 solely upon the administrative record estab-
22 lished at the time of the determination on the
23 application and upon such additional or newly
24 discovered evidence as may not have been avail-
25 able at the time of the determination.

1 “(g) IMPLEMENTATION OF SECTION.—

2 “(1) REGULATIONS.—The Secretary of Home-
3 land Security may issue such regulations as may be
4 necessary to carry out this section.

5 “(2) CONSIDERATIONS.—In prescribing regula-
6 tions described in paragraph (1)—

7 “(A) PERIODS OF CONTINUOUS RESI-
8 DENCE.—The Secretary of Homeland Security
9 shall specify individual periods, and aggregate
10 periods, of absence from the United States
11 which will be considered to break a period of
12 continuous residence in the United States and
13 shall take into account absences due merely to
14 brief and casual trips abroad.

15 “(B) ABSENCES CAUSED BY DEPORTATION
16 OR ADVANCED PAROLE.—The Secretary of
17 Homeland Security shall provide that—

18 “(i) an alien shall not be considered to
19 have resided continuously in the United
20 States, if, during any period for which con-
21 tinuous residence is required, the alien was
22 outside the United States as a result of a
23 departure under an order of deportation,
24 and

1 “(ii) any period of time during which
2 an alien is outside the United States pur-
3 suant to the advance parole procedures of
4 the Department of Homeland Security
5 shall not be considered as part of the pe-
6 riod of time during which an alien is out-
7 side the United States for purposes of this
8 section.

9 “(C) WAIVERS OF CERTAIN ABSENCES.—

10 The Secretary of Homeland Security may pro-
11 vide for a waiver, in the discretion of the Sec-
12 retary of Homeland Security, of the periods
13 specified under subparagraph (A) in the case of
14 an absence from the United States due merely
15 to a brief temporary trip abroad required by
16 emergency or extenuating circumstances outside
17 the control of the alien.

18 “(D) USE OF CERTAIN DOCUMENTA-
19 TION.—The Secretary of Homeland Security
20 shall require that—

21 “(i) continuous residence and physical
22 presence in the United States must be es-
23 tablished through documents, together with
24 independent corroboration of the informa-
25 tion contained in such documents, and

1 “(ii) the documents provided under
2 clause (i) must be employment-related if
3 employment-related documents with re-
4 spect to the alien are available to the appli-
5 cant.

6 “(3) INTERIM FINAL REGULATIONS.—Regula-
7 tions prescribed under this section may be pre-
8 scribed to take effect on an interim final basis if the
9 Secretary of Homeland Security determines that this
10 is necessary in order to implement this section in a
11 timely manner.

12 “(h) DISSEMINATION OF INFORMATION ON LEGAL-
13 IZATION PROGRAM.—Beginning not later than the date
14 designated by the Secretary of Homeland Security under
15 subsection (a)(1)(A), the Secretary of Homeland Security
16 shall broadly disseminate information respecting the bene-
17 fits which aliens may receive under this section and the
18 requirements to obtain such benefits.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 245(c) of such Act (8 U.S.C.
21 1255(c)) is amended by striking “or” before “(8)”
22 and by inserting before the period at the end the fol-
23 lowing: “or (9) any alien who has lawful status
24 under section 245B”.

1 (2) The table of contents of such Act is amend-
2 ed by inserting after the item relating to section
3 245A the following new item:

“Sec. 245B. Lawful status for certain long-term residents.”.

